

The Chairman, Mark Maxwell, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Tuesday, August 19, 2003 in Council Chambers at City Hall.

PRESENT: Kenneth Courtney  
Christopher Fejes  
Marcia Gies  
Michael Hutson  
Mark Maxwell  
Mark Vleck

ALSO PRESENT: Mark Stimac, Director of Building & Zoning  
Bob Davisson, Assistant City Attorney  
Pamela Pasternak, Recording Secretary

ABSENT: Matt Kovacs

Motion by Courtney  
Supported by Vleck

MOVED, to excuse Mr. Kovacs from this meeting due to the recent birth of his son.

Yeas: All – 6

MOTION TO EXCUSE MR. KOVACS CARRIED

**ITEM #1 – APPROVAL OF MINUTES – MEETING OF JULY 15, 2003**

Motion by Courtney  
Supported by Gies

MOVED, to approve the minutes of the meeting of July 15, 2003 as written.

Yeas: 4 – Gies, Hutson, Maxwell, Fejes  
Abstain: 2 – Vleck, Fejes

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

**ITEM #2 – APPROVAL OF ITEMS #3 THROUGH #5**

Motion by Courtney  
Supported by Vleck

MOVED, that items #3 through #5 are approved in accordance with the suggested resolution printed in the Agenda explanation.

Yeas: All – 6

**ITEM #2 – con't.****MOTION TO APPROVE ITEMS #3 THROUGH #5 CARRIED**

**ITEM #3 – RENEWAL REQUESTED. WILLIAM NELSON, FIRE CHIEF CITY OF TROY, 4850 JOHN R.,** for relief of the Zoning Ordinance requirement for a 4'-6" high masonry screening wall between off-street parking areas and adjacent residentially zoned property on the east side of the property.

Mr. Stimac explained that the petitioner is requesting renewal of relief granted by this Board of the Zoning Ordinance requirement for a 4'-6" high masonry screening wall between off-street parking areas and adjacent residentially zoned property on the east side of the property. This item first appeared before this Board in August 2000 and was granted a three-year (3) variance at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant William Nelson, Fire Chief, City of Troy, 4850 John R., a three-year (3) renewal of relief of the Zoning Ordinance requirement for a 4'-6" high masonry screening wall between off-street parking areas and adjacent residentially zoned property on the east side of the property.

- There is an existing drain on the east side of the property.
- There are no complaints or objections on file.
- Variance is not contrary to public interest.

**ITEM #4 – RENEWAL REQUESTED. MI DEV AMERICA, INC., 600 WILSHIRE,** for relief of the required 6' high masonry-screening wall on the west property line abutting residential zoned property.

Mr. Stimac explained that the petitioner is requesting relief of the 6' high masonry screening wall required on the property abutting residential zoned property on the west side. The site has been constructed and occupied and landscaping berms along the west property line have been completed. This Board originally granted this variance in 1996. This item last appeared before this Board in August 2000 and was granted a three-year (3) renewal at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant MI DEV America, Inc., 600 Wilshire, a three-year (3) renewal of relief of the 6' high masonry screening wall required on the west side of the property, which abuts residential zoned property.

- Conditions remain the same.
- There are no complaints or objections on file.
- Variance is not contrary to public interest.

**ITEM #5 – RENEWAL REQUESTED. ST. ELIZABETH ANN SETON CATHOLIC CHURCH, 280 E. SQUARE LAKE**, for relief of the 4'-6" high masonry screening wall required on the north and northern portion of the west side of the property where the parking lot abuts residential zoned property.

Mr. Stimac explained that the petitioner is requesting renewal of relief granted by this Board of the 4'-6" high masonry screening wall required on the north and northern portion of the west side of the property where the parking lot abuts residential zoned property. This item first appeared before this Board at the meeting of August 2000 and was granted a three-year (3) variance at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant St. Elizabeth Ann Seton Catholic Church, 280 E. Square Lake, a three-year (3) renewal of relief of the 4'-6" high masonry screening wall required on the north and northern portion of the west side of the property where the parking lot abuts residential zoned property.

- Conditions remain the same.
- There are no complaints or objections on file.
- Variance is not contrary to public interest.

**ITEM #6 – VARIANCE REQUESTED. PASTOR LYNN SURGENER, TROY CHURCH OF GOD, 1285 E. WATTLES**, for relief to maintain a 4'-6" high berm in lieu of the 4'-6" high masonry screening wall required along the north and east side of the parking lot.

Mr. Stimac explained that the petitioner is requesting relief to maintain a 4'-6" high berm in lieu of the 4'-6" high masonry screening wall required along the north and east side of the parking lot. The Board of Zoning Appeals on a yearly basis has granted this variance since April 1986. The item last appeared before this Board at the meeting of July 2003 and was postponed to allow the Building Department to publish a Public Hearing in order to consider making this a permanent variance. Conditions remain the same and we have no complaints or objections on file.

Mr. Maxwell asked Mr. Stimac to explain the requirements of the Ordinance regarding a berm. Mr. Stimac said that the existing berm would not meet the new requirements of the Ordinance, because it has to be at a height of 4'-6" and also there are specific requirements regarding the spacing and planting of trees. Mr. Stimac indicated that although no one had gone out and measured the berm, he thought it was probably at a height of 3' to 3 ½ '. Mr. Stimac also said that in his opinion that although the landscape currently installed does not meet the letter of the current requirements, the landscaping that exists at this time was sufficient to provide the necessary screening.

Mr. Ralph Iglio representing Pastor Lynn Surgener stated he is in charge of keeping the berm cut and he felt that it was at least 4'-6" high.

**ITEM #6 – con't.**

Mrs. Gies asked if this berm complied with the Ordinance before any changes were made and Mr. Stimac said that it did not and that was the reason a variance was required. Mr. Stimac said that the Ordinance changed in July 2000 and there were other properties that now comply with these changes, however, this property was not one of them. Mr. Stimac explained that basically the petitioner is asking the Board to accept this berm with the deficiencies and make this a permanent variance. Mr. Stimac also said that he thought it would be very difficult to raise the height of an existing berm with existing plantings on it.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one (1) written approval on file. There are no written objections on file.

Motion by Fejes  
Supported by Gies

MOVED, to grant Pastor Lynn Surgener, Troy Church of God, 1285 E. Wattles, a permanent variance for relief to maintain a 4'-6" high berm in lieu of the 4'-6" high masonry screening wall required along the north and east side of the parking lot.

- Variance is not contrary to public interest.
- No complaints or objections on file.
- The mature plantings on the berm provides screening equal to the current minimum standards.
- Compliance with the Ordinance would be unnecessarily burdensome.

Yeas: 5 – Vleck, Courtney, Fejes, Gies, Hutson  
Nays: 1 – Maxwell

**MOTION TO GRANT PERMANENT VARIANCE CARRIED**

**ITEM #7 – VARIANCE REQUESTED. PASTOR DAVID HALAN, CALVARY CHAPEL, 1975 E. LONG LAKE,** for relief to maintain landscaping in lieu of the 4'-6" high masonry-screening wall required adjacent to off street parking.

Mr. Stimac explained that the petitioner is requesting relief to maintain existing landscaping in lieu of the 4'-6" high masonry-screening wall required adjacent to off street parking. The Board of Zoning Appeals has granted this variance on a yearly basis since July 1989. This item last appeared before this Board at the meeting of July 2003 and was postponed to allow the Building Department to publish a Public Hearing in order to consider making this a permanent variance. Conditions remain the same and we have no complaints or objections on file.

**ITEM #7 – con't.**

Pastor David Halan was present and stated that they have a natural screening wall and would like to see it become a permanent variance. Pastor Halan brought in a petition signed by fourteen (14) of the surrounding neighbors in support of this variance.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are two (2) written approvals on file. There are no written objections or complaints on file.

Mr. Hutson asked how this case differed from the Troy Church of God. Mr. Stimac explained that the landscaping here does not have a designed berm as part of the plan and many of the trees were there before the Church was constructed. Mr. Stimac also said that there is a significantly large area between the parking area and the adjacent homes as well as quite a number of large trees.

Motion by Hutson

Supported by Courtney

MOVED, to grant Pastor David Halan, Calvary Chapel, 1975 E. Long Lake, a permanent variance for relief to maintain landscaping in lieu of the 4'-6" high masonry-screening wall required adjacent to off-street parking.

- Literal enforcement of the Ordinance would be unnecessarily burdensome.
- Installation of the berm would require the removal of a large number of existing mature trees.
- Variance is not contrary to public interest.
- Variance would not have an adverse effect to surrounding property.
- Variance does not establish a prohibited use in a Zoning District.

Yeas: All – 6

MOTION TO GRANT PERMANENT VARIANCE GRANTED

**ITEM #8 – VARIANCE REQUESTED. G.J. SLAGON & ASSOCIATES, 1000 JOHN R.,** for relief of the 6' high masonry-screening wall required along the east and south property lines.

The Chairman moved this item to the end of the agenda, Item #12, to allow the petitioner the opportunity to be present.

**ITEM #9 – VARIANCE REQUESTED. HARRY & SUNNIE KWON, 38921 DEQUINDRE,** for relief of the required screen wall for a 35' long portion of the west property line where the property borders residential zoned property.

**ITEM #9 – con't.**

Mr. Stimac explained that the petitioners are requesting relief of the required screen wall for a 35' long portion of the west property line where the property borders residential zoned property. This portion of the site has an underground pipeline easement, and the holder of the easement has denied permission to place the wall within their easement. The 6' high screen wall is required by Section 39.10.01 of the Zoning Ordinance.

Mr. Hutson asked what type of wall was required in this area and Mr. Stimac said that this is a Zoning Boundary wall and must be a 6' high decorative masonry screen wall. Mr. Courtney asked if the owner of the easement could legally prevent someone from building on top of this easement. Mr. Hutson said that he would be interested in reading the paperwork on this property to determine if only permanent structures are prohibited from this easement.

Mr. Atef Hanna, the engineer for this project was present and stated that he had been negotiating with Sun Oil for more than one year and has proposed several different types of walls for this area. Mr. Hanna said that at one point they had agreed to allow for the landscaping berm and two days later said that they did not want anything built on this easement. Mr. Hanna explained that with the exception of this 35', the remainder of the wall has been constructed. Mr. Hanna also said that this has been an "exclusive easement" since 1911 and the easement holder does not want any type of wall on it. Mr. Hutson asked if they had a copy of the property deed because he would like to read it and determine if in fact a wall could be put up. Mr. Hanna said he would get copies for the Board members.

Mr. Hutson asked if any other attorneys have had the opportunity to look over the paperwork for this property. Mr. Kwon stated that this is an exclusive easement. Mr. Hutson said that the document will control whether or not you can put anything on easement or not. He said that he would like to take a look at the easement agreement to determine if they could stop them from putting of a wall. Mr. Kwon said at the last meeting with Sun Oil he thought that they were going to work with them regarding the wall; however, at the last minute they changed their minds. Mr. Kwon also said he would get a copy of the easement agreement.

Mr. Maxwell asked if this was holding up the development of the property and Mr. Stimac said that the building was almost finished and ready for occupancy. Mr. Stimac also said that they could issue a temporary Certificate of Occupancy pending what the Board decided on the wall variance.

Mr. Kwon said that there is a permanent structure on the north side of the property. Mr. Stimac explained that originally this easement was owned by Buckeye Oil Pipeline Company and it was possible that they allowed structures to be built in the easement when they controlled the easement.

**ITEM #9 – con't.**

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals on file. There is one (1) written objection on file.

Motion by Courtney  
Supported by Hutson

MOVED, to postpone the request of Harry & Sunnie Kwon, 38921 Dequindre, for relief of the required screen wall for a 35' long portion of the west property line where the property borders residential zoned property until the next meeting of September 17, 2003.

- To allow the petitioner the opportunity to supply a copy of the easement agreement for the Board to review.

Yeas: All – 6

MOTION TO POSTPONE REQUEST UNTIL MEETING OF SEPTEMBER 17, 2003  
CARRIED

**ITEM #10 – VARIANCE REQUESTED. CHUCK MUNSELLE, 1340 CAMBRIA,** for relief of the Zoning Ordinance to construct an attached pergola on an existing legal non-conforming house with a 17-foot front setback where a 25-foot front setback is required.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct an attached pergola. This lot is a double front corner lot. As such, it has front yard requirements along both Cambria and Barabeau. Section 30.10.05 requires a 25' minimum front yard setback in R-1D Zoned Districts. The site plan submitted indicates the existing house has a 17' front setback along Barabeau. The proposed pergola would attach to the rear of the house and continue this 17' front setback. Section 40.50.04 prohibits expansions or alterations to non-conforming structures in a way that increases its non-conformity.

Mr. Stimac further noted that the structure became non-conforming when the adjacent property was split and homes fronting on Barabeau were constructed. Until that time this lot was not a double front condition and the 17' setback complied.

Mr. Chuck Munselle was present and stated that this pergola was aluminum and they wished to attach it to the west side of their home in order to shade this area. Mr. Munselle also said that there is a fence around the property that is 5'-4" high and the pergola would be inside the fence line.

**ITEM #10 – con't.**

Mr. Maxwell asked what the height of the pergola would be. Mr. Munselle said that he thought it would be 9'-2" to the top. Mr. Munselle indicated that he was going to have it painted to match the color of his home.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are two (2) written approvals on file. There are no objections in file.

Motion by Vleck  
Supported by Gies

MOVED, to grant Chuck Munselle, 1340 Cambria, relief of the Zoning Ordinance to construct an attached pergola on an existing legal non-conforming house with a 17' front setback where a 25' front setback is required.

- Front setback of the pergola is consistent with setback of the home.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.

Yeas: All – 6

**MOTION TO GRANT VARIANCE CARRIED**

**ITEM #11 – VARIANCE REQUESTED. ANUP DESHMUKH, 2457 CEDAR KNOLL,** for relief of the rear yard setback to construct an uncovered deck with a 22-foot rear yard setback where a 25-foot yard setback is required.

Mr. Stimac explained that the petitioner is requesting relief of the rear yard setback to construct an uncovered deck. The site plan indicates a 22' rear setback to the proposed deck. Section 41.45.00 requires a 25' minimum rear setback for uncovered decks in R-1E Zoning Districts.

Mr. Anup Deshmukh was present and stated that he would like a larger deck in order to put out a table and chairs to enjoy his backyard.

Mr. Maxwell asked what size deck Mr. Deshmukh is proposing and Mr. Deshmukh said it would be 13' x 11'. Mr. Maxwell then asked if the deck would be put in at grade level and Mr. Deshmukh said that it would be approximately 1 ½' off of the ground with a railing and steps. Mr. Maxwell then asked if any of the trees would be affected with the construction of this deck. Mr. Deshmukh said that the edge of the deck would be approximately 5' away from the nearest tree.



**ITEM #11 – con't.**

Mr. Courtney asked if a variance was required for either a deck made from brick pavers or a cement slab. Mr. Stimac said that neither item would require a variance. Mr. Courtney then asked if he could build up the property in order to put in a slab or brick pavers. Mr. Stimac indicated that the Engineering would have to approve a different grade.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals or objections on file.

Motion by Vleck

Supported by Courtney

MOVED, to grant Anup Deshmukh, 2457 Cedar Knoll, a variance for relief of the rear yard setback to construct an uncovered deck with a 22' rear yard setback where a 25' rear yard setback is required.

- The home on the adjacent property was constructed a significant distance from the common property line.
- Variance request is minimal.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.

Yeas: All – 6

**MOTION TO GRANT REQUEST CARRIED**

**ITEM #12 (ITEM #8) – VARIANCE REQUESTED. G.J. SLAGON & ASSOCIATES, 1000 JOHN R., for relief of the 6' high masonry-screening wall required along the east and south property lines.**

Mr. Stimac explained that the petitioner is requesting relief of the 6' high masonry-screening wall required along the east and south property lines. This relief has been granted since 1981 due to the fact that the easterly portion of the property line has a retention pond adjacent to it and the south property line abuts the parking lot for the senior citizen complex. This item last appeared before this Board at the meeting of July 2003 and was postponed to allow the petitioner the opportunity to be present.

Mr. Courtney asked if it would be possible for a wall to be installed on this site. Mr. Stimac explained that this site is in the O-1 Zoning Classification and a screen wall is required. Mr. Stimac said that a wall could be constructed on the south and southern portion of the east side of this property. He further noted that because of the location of

**ITEM #12 (ITEM #8) – con't.**

the drain that it would be very difficult to install the wall at the north end of the east property line. Mr. Courtney said that he felt this should be a permanent variance.

Mr. Hutson said that although he understood the need for a variance, he felt that the petitioner should have shown an interest and attended the meeting. Mr. Hutson also said that he felt a precedent would be set if the variance were to be approved without the petitioner bothering to attend the meeting. Mr. Hutson was in favor of denying this request.

Motion by Courtney

Supported by Vleck

MOVED, to approve the request of G.J. Slagon & Associates, 1000 John R., for relief of the 6' high masonry screen wall required along the east and south property line where the property abuts residentially zoned property.

Motion by Courtney

Supported by Vleck

MOVED, to postpone the vote on the motion on the request of G.J. Slagon & Associates, 1000 John R., until the meeting of September 17, 2003.

- To allow the petitioner the opportunity to be present.

Yeas: 5 – Gies, Hutson, Vleck, Courtney, Fejes

Nays: 1 – Maxwell

**MOTION TO POSTPONE REQUEST UNTIL MEETING OF SEPTEMBER 17, 2003  
CARRIED**

Mr. Maxwell asked if the September meeting of the Board of Zoning Appeals could be changed to Wednesday, September 17, 2003, as he would not be able to attend on September 16, 2003. Mr. Fejes stated that the 17<sup>th</sup> of September would be better for him also as he will be out of town on the 16<sup>th</sup>.

Motion by Courtney

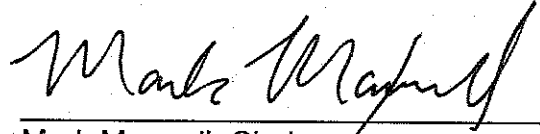
Supported by Fejes

MOVED, to change the date of the September 2003 meeting of the Board of Zoning Appeals from Tuesday, September 16, 2003 to Wednesday, September 17, 2003.

Yeas: All – 6

MOTION TO CHANGE MEETING DATE TO WEDNESDAY, SEPTEMBER 17, 2003  
CARRIED

The Board of Zoning Appeals meeting adjourned at 8:36 P.M.



Mark Maxwell, Chairman



Pamela Pasternak, Recording Secretary

MS/pp